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HUMAN RIGHTS COMMITTEE

Sixty-fourth session

SUMMARY RECORD OF THE 1704th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 October 1998, at 10 a.m.

Chairman: Ms. CHANET

later: Ms. MEDINA QUIROGA

later: Ms. CHANET

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Iceland [CCPR/C/94/Add.2; HRI/CORE/1/Add.26; CCPR/C/64/Q/ICE/1 (written replies to the list of issues, document without a symbol, available in English only)]

1. At the invitation of the Chairperson, Mr. Geirsson, Mr. Jonsson and Mr. Gudmundsson (Iceland) took places at the Committee table.

2. The CHAIRPERSON, on behalf of the Committee, welcomed the delegation and invited it to introduce Iceland's report.

3. Mr. JONSSON (Iceland) said that his country attached great importance to compliance with the International Covenant on Civil and Political Rights. The Icelandic delegation was thus honoured to provide information on matters relating to that instrument and to enter into what would no doubt be a constructive and fruitful dialogue with members of the Committee.

4. Mr. GEIRSSON (Iceland) said that Iceland's second periodic report had been submitted to the Committee in 1993, while the third report now under consideration had been submitted in March 1995. In the interim period significant changes had been made to Icelandic legislation on human rights and, although such changes were described in the report before the Committee, it was worthwhile reviewing the salient points.

5. Firstly, the Act on Administrative Procedure (No. 73/1993) set forth for the first time the general principles governing all acts of public administration, at both State and municipal levels. Secondly, the Foreign Nationals Supervision Act (No. 133/1993) provided that it was no longer the Ministry of Justice but the Immigration Office which should decide on the expulsion of a foreigner, on the understanding that the decision was subject to appeal and that the foreigner in question was informed of the existence of such recourse. For that reason the reservation made by Iceland with respect to article 13 of the Covenant had been withdrawn, since it had become obsolete.

6. He also drew attention to Act No. 83/1994, establishing the Office of the Ombudsman for Children, whose mandate was to protect the interests and rights of children and to ensure that the administrative authorities, individuals, societies and associations did likewise. As for the Personal Names Act (No. 45/1996), it provided that a foreigner acquiring Icelandic nationality was no longer obliged to choose an Icelandic name: both the applicant and his/her children could retain their own names. Furthermore, Constitutional Act No. 97/1996 had amended the provisions of the Icelandic Constitution relating to human rights with a view to taking account of Iceland's obligations under relevant international instruments.

7. Lastly, by virtue of Act No. 62/1994, the European Convention on Human Rights had been the first international instrument to be incorporated in Iceland's domestic legislation. However, no decision had yet been taken as to

the incorporation of other human rights instruments in internal law. Those major changes had had a significant impact on Icelandic legislation by creating greater public awareness about human rights in general. In that connection, it was worth noting that Iceland's second periodic report as well as the Committee's concluding observations thereon had been distributed to the Icelandic media.

8. Further important changes had been made in Icelandic legislation since the drafting of the third report. For instance, the Public Information Act (No. 50/1996), which had entered into force on 1 January 1996, made it compulsory for administrative authorities to provide public access, under certain conditions, to information on specific matters. The purpose of the Act, which applied to State and municipal administration, was to provide the public with a means to monitor the activities of administrative authorities, thereby strengthening respect for democratic principles.

9. Two types of changes had been introduced with regard to the judiciary, by Act No. 15/1998, intended to strengthen the judicial system as the third branch of government. On the one hand, the internal administration of district courts had by and large been assigned to the Judicial Council, an independent body the majority of whose members were judges and which was responsible for representing the district courts and for monitoring their activities. On the other hand, an independent committee on judicial activities had been established, whose role was to issue general rules on additional activities that might be undertaken by judges and to deal with complaints relating to the course of justice. The new Act was based on similar bills drafted in Denmark and Norway as well as the United Nations Basic Principles on the Independence of the Judiciary.

10. The Legal Representation Act (No. 77/1998), due to enter into force on 1 January 1999, would abrogate current legislation whereby barristers were obliged to be members of the Icelandic Bar Association. The Police Act (No. 90/1996), which had come into force on 1 July 1997, introduced major changes to the organization of the police services and contained new provisions on the duties of policemen and the circumstances under which they were allowed to use force, make arrests and conduct searches. The Legal Competency Act (No. 71/1997), which had entered into force on 1 January 1998, contained far more detailed provisions on procedure relating to legal competency, with the objective of securing the status of persons against whom a claim for deprivation of legal competency had been lodged.

11. The CHAIRPERSON thanked the Icelandic delegation for the detailed information given and invited it to reply to questions 1, 2 and 3 on the list of issues (CCPR/C/64/Q/ICE/1).

12. Mr. GUDMUNDSSON (Iceland), replying to question 1 concerning the constitutional and legal framework within which the Covenant was implemented (art. 2), said that in the spring of 1998, the Government had looked into the possibility of incorporating the Covenant in domestic legislation and that the Ministry of Justice, drawing on the experience of Norway, was contemplating the appointment of a special committee which would have the task of studying the question. Although the Covenant did not directly have the force of domestic law, the 1995 constitutional amendments, which had since become

Constitutional Act No. 97/1995, were largely inspired by the provisions of the Covenant and of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13. As far as conflicts between the Covenant and the Constitution were concerned, in many instances it had been possible to interpret Icelandic legislation in the light of the European Convention on Human Rights without any conflict. In fact, since the incorporation of the Convention in Icelandic domestic legislation, there had been no cases in which the courts had declared that Icelandic legislation should prevail over a conflicting provision of the Covenant. It was quite common for the parties involved in a case or even the courts themselves to invoke the provisions of the Covenant and other international human rights instruments. The Government of Iceland had adopted some measures to harmonize domestic legislation with the Covenant. For instance, under Act No. 135/1996 amending the Penal Code, anyone who refused an individual a particular service or access to public places on the grounds of race or ethnic origin was liable to a fine or imprisonment for up to six months.

14. In reply to question 2 concerning equality before the law and equal protection of the law (arts. 3 and 26), he said that article 65 of the Constitution, directly inspired by article 26 of the Covenant, provided special guarantees for equality between men and women. The article was often invoked in Icelandic courts and there were concrete examples of its application serving to enhance sexual equality. For instance, in a case involving a compensation claim against an insurance company, the Supreme Court had decided that it was contrary to article 65 of the Constitution to assess the future income of a girl at a lower level than the future income of a boy, although statistics showed that women generally earned lower wages.

15. No change had been made to the Nationality Act with respect to children born out of wedlock. According to the Act, children of an Icelandic father and a foreign mother could not acquire Icelandic nationality if their parents were not married. The legislation, which was similar to that of other Nordic countries, was based on the principle that a child acquired the nationality of its mother. In Iceland, it was the Parliament which granted nationality, following guidelines prepared by a special parliamentary committee, according to which foreigners with one Icelandic parent were entitled to Icelandic nationality after two years' residence in the country. As far as preferential treatment for public officials was concerned, article 108 of the Penal Code, which provided heavy penalties for defamation of a public official, had been repealed.

16. In response to question 3 concerning derogation from obligations under the Covenant (art. 4), he said that the Icelandic Government had not deemed it necessary to include a derogation clause in the chapter of the Constitution dealing with human rights. Since the European Convention on Human Rights was part of Icelandic internal law, the derogation clause contained in article 15 of that instrument had the force of law, albeit with more limited scope than that of article 14 of the Covenant.

17. The CHAIRPERSON invited Committee members to ask the Icelandic delegation supplementary questions if they so wished.

18. Mr. YALDEN said he would welcome information not only about the legislation and regulations setting forth the rights of citizens, but also on the actual enjoyment of those rights. What mechanisms guaranteed their implementation? Did the Human Rights Office (para. 11 of the report) have functions other than those traditionally carried out by non-governmental organizations (NGOs) such as creating awareness about human rights? Were there public or independent bodies in Iceland responsible for dealing with human rights violations and what was the exact mandate of mediators, in particular the mediator for children?

19. Regarding equality between the sexes, he asked whether there were recent statistics on complaints lodged with the Equal Status Complaints Committee (paras. 28 and 29 of the report) and whether that Committee had proved efficient and took part in the project currently under way on job evaluation. Furthermore, was there an independent body responsible for monitoring implementation of the recently adopted Public Information Act?

20. On the subject of non-discrimination, he inquired whether the provisions of new section 65 of the Constitution applied equally to homosexuals and to the disabled (para. 98 of the report). Lastly, he asked whether the decisions of the Immigration Office (para. 55 of the report) could be appealed to a body other than the Ministry of Justice, and in particular a court of law.

21. Mr. PRADO VALLEJO welcomed the replies by the Icelandic delegation, although they had not entirely dispelled the Committee's doubts. No legal or political reason had been given to justify the fact that the European Convention on Human Rights had been incorporated in the national legal order, whereas the same could not be said for the Covenant. He pointed out that according to paragraph 11 of the report, the Human Rights Office had the task of assessing progress made in the implementation of international human rights instruments, yet the State party was obliged, not to assess progress made, but to guarantee the effective implementation of basic rights. A further obligation undertaken by Iceland when ratifying the Covenant, with which it had not complied, was to take all necessary steps to harmonize national legislation with the provisions of the Covenant. He deplored the fact that domestic law took precedence over the Covenant, recalling that the Vienna Convention on the Law of Treaties, to which Iceland was a party, provided that national legislation could not be invoked to evade an international obligation. Lastly, he asked whether human rights were taught to children, young people, policemen and other law enforcement officers.

22. Lord COLVILLE said his understanding of paragraphs 97, 98 and 99 of the report was that in Iceland the prohibition of discrimination was based essentially on new section 65 of the Constitution relating to equality between the sexes. That would not suffice, since the section covered only some of the grounds for discrimination. Admittedly the European Convention on Human Rights had been incorporated in national legislation, but that legislation did not contain any provisions on discrimination. Did not the fact that Parliament had had to adopt specific laws to prohibit discrimination in access to public places demonstrate that current provisions were inadequate? If the Covenant had formed part of the internal legal order it would not have been necessary to adopt such legislation. He also wondered about the possible discriminatory nature for Icelanders themselves of the Personal Names Act and

asked the delegation to indicate what measures the Government was planning to take in future to bring Icelandic legislation into line with article 26 of the Covenant.

23. Mr. KLEIN thanked the Icelandic delegation for providing recent data and said he was pleased to note the entry into force of very positive provisions since consideration of the second periodic report. He welcomed the establishment of a committee to consider the incorporation of the Covenant in national law and could only but encourage efforts along those lines, which would make the rights enshrined in the Covenant accessible to Icelandic citizens. For in many cases it seemed to him that domestic legislation was less favourable than the provisions of the Covenant. For instance, he regretted the limitations on freedom of residence and wondered what the meaning of new section 74 of the Constitution was: was everyone entitled to form an association? Similarly, since discrimination on the grounds of language and social origin were not explicitly referred to in new section 65 of the Constitution, he wondered whether they were in fact provided for. Lastly, he understood from paragraph 31 (c) of the report that candidates for parliamentary elections must be members of a political party and, from paragraph 37 of the report, that scientific and medical experiments could be carried out on the mentally handicapped not only in their own interest but also in the public interest. He sought clarification on those two points.

24. Mr. LALLAH welcomed the positive aspects evident in Iceland's third periodic report, but pointed out that it was also the Committee's task to highlight any negative points or areas which could be improved. For instance, he noted that the Icelandic authorities had until now shown what he would call a Eurocentrist attitude. The fact was that Iceland had not only acceded to the European Convention on Human Rights, but was also a party to the Covenant. It accordingly had a duty to implement the Covenant's provisions and to fulfil all the obligations contracted under it.

25. It was true that Iceland was a peaceful country which had so far never needed to declare a state of emergency, but that was not enough to explain the absence of legislation providing that any measures derogating from obligations laid down in the Covenant should be compatible with other obligations assumed under international law. The Icelandic authorities had not so far found it necessary to include provisions in the Constitution dealing specifically with derogations, but prevention was better than cure and once events had occurred it was usually too late to adopt the necessary measures. He pointed out that the European Convention on Human Rights, which now formed an integral part of Icelandic law, did not contain any provisions identical to those of article 4 of the Covenant. Thus Icelandic legislation did not contain any provision giving effect either to article 4 or to article 2, paragraph 3, of the Covenant, which was highly regrettable.

26. He noted that the principle contained in article 26 of the Covenant had been incorporated into the revised Constitution, as indicated in paragraphs 97 and 98 of the report. As he saw it, however, what was stated in those paragraphs was in the nature of wishful thinking, since there seemed to be nothing to prevent the legislator from proposing measures contravening the principle of equality. In addition, he pointed out that article 24 of the Covenant had no equivalent in the European Convention on Human Rights, which

was often read, wrongly, in conjunction with article 23 of the Covenant. In his view, the concept of the family was not limited to the situation of a married couple: two persons who had lived together for several years and had children could also constitute a family. Properly speaking, article 24 dealt with the rights of children without discrimination, whether born in or out of wedlock. He had listened to the explanations of the Icelandic delegation concerning distinctions which were applied to children born out of wedlock in regard to the right to nationality, and in his view Iceland was failing to meet its obligations under the Covenant in respect of both article 26 and article 24. Article 24 expressly stated that every child had the right to special measures of protection on the part of his family, society and the State. It was thus clear that no legi lative text or administrative practice could establish any distinction between children, whether born in or out of wedlock.

27. Mr. SCHEININ welcomed the constitutional reform of 1995, and noted that it coincided with a comparable reform carried out in his own country, Finland, which had enabled the provisions of the International Covenant on Civil and Political Rights and those of the International Covenant on Economic, Social and Cultural Rights to be incorporated in the Constitution, thus ensuring that it enshrined the principle of the universality, indivisibility and interdependence of human rights.

28. The fact that Iceland had incorporated the European Convention on Human Rights into its domestic law could have indirect effects on the interpretation of other international instruments to which Iceland was a party. For instance, since the decision to incorporate that Convention into Icelandic legislation, the provisions of other international human rights instruments had been invoked in the Icelandic courts, and had sometimes even been given precedence over domestic law even though they did not form part of it. He noted that Norway now seemed to be ready to incorporate the Convention and the two Covenants into its domestic law, and that Finland was in principle incorporating all similar treaties to which it was a party into its legislation. Thus, a number of countries near to Iceland were demonstrating their willingness to guarantee the universal and indivisible nature of human rights.

29. Concerning implementation of article 7 of the Covenant, he noted that section 68 of the Constitution prohibited inhuman or degrading treatment, and that section 71 protected the right to privacy. However, the notion of the dignity of the human person, which was included in the Universal Declaration of Human Rights and in the Covenant, did not appear in the Icelandic Constitution. Since the Icelandic population was very homogeneous and had lived for centuries in some degree of isolation, it was an interesting subject for genetic research. Did the authorities consider that sections 68 and 71 of the Constitution offered sufficient guarantees to protect the dignity of the human person or, on the contrary, that further legal measures should be taken for that purpose?

30. Concerning implementation of article 25 of the Covenant, read in conjunction with article 1, he would like to know how the right of citizens to take part in the conduct of public affairs was guaranteed in practice. Lastly, concerning Iceland's accession to the European Free Trade Association,

he pointed out that EFTA member countries were required to incorporate a number of standard-setting acts of the European Union into their legislation. Did the Icelandic authorities plan to take measures guaranteeing the right provided for under article 25 of the Covenant, taking into account decisions adopted in the EFTA framework?

31. Ms. Medina Quiroga took the Chair.

32. Ms. EVATT welcomed the progress achieved in the protection of human rights in Iceland since the submission of the second periodic report (CCPR/C/46/Add.5), as well as the constitutional amendments of 1995. She was also glad to see that the authorities were planning to incorporate all the Covenant's provisions into domestic law, which would enable shortcomings in the Constitution to be remedied.

33. On the question of gender equality, a reading of Iceland's third periodic report showed that the situation had hardly changed in recent years, notably with regard to the employment of women and their participation in the conduct of public affairs. However, she noted the positive measures taken concerning job evaluation and salaries, and asked whether other measures were planned, notably to combat discrimination in the private sector.

34. Concerning measures taken to combat violence against women, she understood that important legislative measures, for instance providing for payment of compensation to victims, had been adopted, and she would appreciate further details on that point. In regard to the situation of children born out of wedlock, she noted that the new section 65 of the Constitution provided for equality before the law regardless of birth. However, the unofficial translation of the text of the revised Constitution which had been distributed to members of the Committee referred to parentage. She would be glad if the Icelandic delegation could clarify that point. She also wondered why that constitutional provision did not render void the texts which maintained discrimination in regard to children born out of wedlock. Lastly, what was the effect of the new section 65 of the Constitution on legislative provisions establishing a distinction between children born in wedlock and other children as far as obtaining nationality was concerned?

35. She would also like fuller information on the situation of homosexuals. More specifically, had the bill referred to in paragraph 89 of the report been adopted and, if so, had it entered into force?

36. Mr. EL SHAFEI said the Committee's delay in considering the third periodic report of Iceland reflected the difficulties it was experiencing in conducting its work within satisfactory time limits, in the light of the increasing number of States parties to the Covenant on the one hand and the inadequacy of the resources available to the Committee on the other. He hoped that the allocation of additional resources would make it possible to overcome those difficulties.

37. He noted with satisfaction that Iceland had withdrawn two of its reservations to the Covenant; however, three other reservations remained for

which there was no apparent justification, and he hoped that the Icelandic Government would consider reviewing its position on the matter and withdrawing its last remaining reservations.

38. He shared the concerns of Mr. Klein and Mr. Lallah concerning the incorporation of the Covenant in Icelandic domestic law, and associated himself with their comments regarding implementation of articles 4, 24 and 26. He would like to know whether any mechanisms for obtaining compensation in cases of human rights violations existed apart from the courts, and whether any mediators existed apart from the children's mediator. Concerning implementation of article 2, paragraph 2, of the Covenant, the report stated that there had been no change in that respect either in law or in practice. He would like to have more information on that subject. Lastly, he would like to know the reasoning behind the provisions contained in the third paragraph of the new section 64 of the Constitution, whereby anyone who was not a member of a religious group was required to pay the Icelandic University the contributions he would otherwise have had to pay to that group. Had the law in that area been changed?

39. Ms. Chanet resumed the Chair.

40. Ms. GAITAN DE POMBO welcomed the fact that respect for human rights was in general satisfactorily guaranteed in Iceland, even if, as other members of the Committee had pointed out, there were still certain shortcomings which needed to be remedied. For her part, she would like to know more about the Human Rights Office which had been set up in 1994. What were its functions? Did it maintain relations with national and international NGOs? Did it have a part in preparing Iceland's periodic reports to the Committee, and what role did it play in the dissemination of the Covenant? She shared the concerns expressed by Mr. Klein and Mr. Scheinin concerning the protection of the dignity of the human person in the context of genetic research.

41. Mr. BHAGWATI welcomed the considerable progress achieved in regard to human rights in Iceland, and the volume of legislation introduced since the submission of Iceland's second periodic report (CCPR/C/46/Add.5). In particular, he noted with satisfaction the adoption of several texts designed to bring Icelandic legislation into line with the Covenant.

42. He associated himself with all the questions already raised by members of the Committee, and hoped that the delegation could provide the replies requested. For his part, he would like to know whether a law had ever been nullified on the grounds that it contravened the Constitution or was incompatible with the Covenant. Had there been cases in which the law had been interpreted in the light of the provisions of the Covenant? How was the law on equal status applied? What were the role and powers of the Equal Status Complaints Committee, had that body already received any complaints and, if so, what measures had been taken? In addition, he, like other members of the Committee, wondered whether the Icelandic Human Rights Office could investigate human rights violations. If so, in how many cases had it made an investigation, and what measures had it taken?

43. Concerning texts governing the expulsion of aliens, he noted that there was a possibility of appeal to the Ministry of Justice. Was any provision

made for review of a decision by organs of the judiciary or other independent bodies? He would like to know whether the Committee dealing with job evaluation had finished its work and formulated recommendations with a view to ensuring that the principle of equal pay for equal work was respected.

44. Ms. MEDINA QUIROGA shared the concerns expressed by Mr. Lallah and Ms. Evatt on inequality between men and women and on the discrimination that could be shown towards children born out of wedlock. She too stressed the importance of having the Covenant's provisions incorporated into the domestic law of all States parties, Iceland included. She was not clear as to the meaning of section 30 of the Icelandic Constitution, which provided that only the President could grant exemptions from laws "in accordance with established practice". What were those exemptions, and what was "established practice" in that connection?

45. The CHAIRPERSON invited the delegation to respond to the additional questions put by members of the Committee.

46. Mr. GEIRSSON (Iceland) thanked members of the Committee for their comments and questions, which would be very useful to his Government in its continuing review of how the provisions of the Covenant were being implemented. He noted that the Committee's concern had focused chiefly on the possibility of incorporating the provisions of the Covenant into Iceland's domestic law. In that connection, the Ministry of Justice had planned in spring 1998 to set up a committee which would be responsible for making recommendations on the subject. It had naturally sought the cooperation of other Nordic countries, notably Norway, which was relatively advanced in the matter of incorporating the provisions of the Covenant into domestic law. Nevertheless, a number of complex questions remained, which was why it had not been possible to take the necessary decisions speedily. However, as members of the Committee had noted, the amendments to the Constitution made in June 1995 were evidence of progress towards the adoption of provisions which broadly complied with those of the Covenant. In response to the concern expressed by members of the Committee regarding gender equality, he pointed out that Iceland was now a party to the Convention on the Elimination of All Forms of Discrimination against Women, which in itself was clearly a positive development.

47. Mr. GUDMUNDSSON (Iceland), replying to questions on the scope of the new section 65 of the Constitution, said that the intention of the legislature had been to guarantee the equality of everyone before the law, and that as a result the provisions of the new article also applied to homosexuals. Concerning the role of the mediator in respect of implementation of the law on information, he stated that the latter's responsibilities included receiving complaints of alleged violations of the law, informing the Government of those complaints, and giving his opinion on any discrimination which might appear in the way the law was applied. Similarly, the Ministry of Justice could seek the opinion of the mediator in case of difficulties in applying the law on immigration applicable to aliens.

48. Replying to questions on the collection of data concerning gender equality, he stated that his delegation did not have any recent statistics on progress achieved in that field, but that detailed information would be

provided in Iceland's report to the Committee on the Elimination of Discrimination against Women, which was currently in the course of preparation.

49. In response to questions concerning the Human Rights Office, he said that the Office had been set up following a joint decision by a number of human rights associations active in Iceland, and although there was no statute making its decisions legally binding, it played an important role in the implementation of international human rights instruments to which Iceland was a party, and supplied the Government with useful information on the subject. In addition, elementary instruction in human rights was given in the country's educational establishments, and further education was provided in the law faculties of universities. Members of the police were required to undergo special training in human rights.

50. In reply to questions concerning implementation of the new section 65 of the Constitution, he said that the provisions of that article prohibited any discrimination on the grounds of sex, religion, opinion, national origin, race, colour, financial status, affiliation or any other condition, provisions which were in conformity with those of the Covenant, and that penalties for violation of those provisions were laid down in the Penal Code. With regard to the last paragraph of section 66 of the Constitution, which provided that anyone lawfully in the country had the right to freedom of movement "subject to the restrictions provided for by law", he said that the only restrictions that could be imposed were those which applied to any person who was required by law to inform the authorities of his movements. Section 74 of the Constitution applied not only to Icelandic nationals but to anyone residing in the country. Lastly, concerning the questions raised in relation to paragraph (c) of section 31 of the Constitution, he said it should be noted that candidates wishing to stand in parliamentary elections were not required to belong to any political party.

51. The law on personal names had been amended, and aliens residing in Iceland could now keep their own name. In regard to the situation of children born out of wedlock or children who had one parent who was not Icelandic, the Government had not yet taken any decision to amend the relevant legislation.

52. Mr. GEIRSSON (Iceland) added that when amendments had been made to the Constitution, the legislator had not considered it necessary to include a provision for derogation in respect of certain human rights. The need for that type of derogation had never arisen, and it was unlikely that the situation would change in the near future.

53. The CHAIRPERSON thanked the delegation for its replies.

The meeting rose at 1 p.m.